UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Brockton Savings Bank v. Peat, Marwick, Mitchell & Co., First United Fund, Ltd.

2 Fed. R. Serv. 3d 1126 (1st Cir. 1985) · No. No. 85-1174 · Decided August 26, 1985

SUMMARY

The First Circuit affirmed a default judgment entered against First United Fund for willful discovery violations, evasiveness, and disobedience of court orders. The court held that the district court acted within its inherent authority to investigate the alleged non-retention of documents and impose severe sanctions. It also held that the damages hearing was procedurally sufficient because the losses were mathematically ascertainable and contributory negligence was not a defense to the intentional misrepresentation claim.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Coffin, Circuit Judge; Rubin, Circuit Judge, sitting by designation from the Fifth Circuit; Bownes, Circuit Judge
JURISDICTION	Federal
DECIDED	August 26, 1985
DOCKET	No. 85-1174
DISPOSITION	affirmed
PROCEDURAL POSTURE	First United Fund, Ltd. appealed from a default judgment entered as a sanction for abusive discovery conduct and from the damages determination following the default.
STANDARD OF REVIEW	Abuse of discretion for the district court's entry of default judgment as a discovery sanction and its management of the damages hearing.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	First United Fund, Ltd. v. Brockton Savings Bank

TOPICS

default judgment · discovery dispute · sanctions · civil procedure · commercial litigation

PRACTICE AREAS

civil procedure · discovery and sanctions · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether the district court acted within its authority and discretion in entering default judgment against First United for abusive discovery conduct and failure to comply with discovery orders.
2. Whether the damages hearing was procedurally sufficient when it was limited to calculating Brockton's total loss and did not permit evidence concerning contributory or comparative negligence by Brockton or alleged conduct by Peat, Marwick.

HOLDINGS

1. The district court acted within its discretion in entering default judgment based on First United's repeated evasiveness, delay, disobedience of discovery orders, apparent misleading conduct concerning the existence of documents, and refusal to produce ordered witnesses.
2. The damages hearing was procedurally sufficient because Brockton's losses were definite and readily calculable, and the magistrate properly limited the hearing to computation of damages. First United was not entitled to prove Brockton's contributory negligence because the established intentional-misrepresentation claim was not subject to that defense, and Peat, Marwick's alleged conduct was not relevant to the separate claims against First United.

KEY QUOTATIONS

> *"It seems to us central to the functioning of a court that it be able sua sponte to explore directly and promptly the truth and circumstances of the averred disappearance or "non-retention" of long-assumed existing evidence and to impose sanctions for the unexplained refusal to permit such exploration."* (¶ 29)

> *"Because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion."* (¶ 30)

FACTUAL BACKGROUND

Brockton purchased a $1 million, 90-day certificate of deposit issued by Penn Square Bank after allegedly being misled by First United, a securities broker-dealer, about Penn Square's financial condition. Penn Square failed shortly afterward, causing Brockton to lose most of its investment. During discovery, First United repeatedly gave late and incomplete responses, resisted production on grounds of irrelevance, burden, and confidentiality, later claimed that solicitation letters had not been retained, and refused to produce its president and an employee-affiant after being ordered to do so.

PROCEDURAL HISTORY

Brockton Savings Bank sued First United Fund and Peat, Marwick, Mitchell & Co. over the purchase of a Penn Square Bank certificate of deposit. After repeated failures to comply with discovery orders, delayed and incomplete production, and refusal to produce ordered witnesses, the magistrate recommended default judgment, which the district court adopted. Following a damages hearing limited to computation of Brockton's loss, the district court entered judgment for $783,868.63. The First Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Guthrie, 733 F.2d 634, 637 (4th Cir. 1984)
- Jaynes v. Jaynes, 496 F.2d 9, 10 (2d Cir. 1974)
- GFI Computer Industries, Inc. v. Fry, 476 F.2d 1, 3-5 (5th Cir. 1973)
- Steel, Inc. v. Atchison, Topeka & Santa Fe Railway, 41 F.R.D. 337, 339 (D. Kan. 1967)
- National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642-43 (1976)
- Damiani v. Rhode Island Hospital, 704 F.2d 12, 15, 17 (1st Cir. 1983)
- Hammond Packing Co. v. Arkansas, 212 U.S. 322, 350-51 (1909)
- Emerick v. Fenick Industries, Inc., 539 F.2d 1379, 1381 (5th Cir. 1976)
- First National Bank v. Western Casualty and Surety Co., 598 F.2d 1203, 1205-06 (10th Cir. 1979)
- Roadway Express, Inc. v. Piper, 447 U.S. 752, 764-65 (1980)
- Link v. Wabash Railroad, 370 U.S. 626, 630-31 (1962)
- Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944)
- Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 (1946)
- Penthouse International, Ltd. v. Playboy Enterprises, Inc., 663 F.2d 371, 386 (2d Cir. 1981)
- O'Connell v. Mason, 132 F. 245, 247 (1st Cir. 1904)
- Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982)
- Trans World Airlines v. Hughes, 449 F.2d 51, 70 (2d Cir. 1971), rev'd on other grounds, 409 U.S. 363 (1973)
- Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d 1319, 1323 (7th Cir. 1983)
- Curry v. Fred Olsen Line, 367 F.2d 921, 928 (9th Cir. 1966)
- In re Uranium Antitrust Litigation, 617 F.2d 1248, 1262-63 (2d Cir. 1980)